IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7347 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

AMBUBHAI P PATEL

Appearance:

1. Special Civil Application No. 7347 of 1988

MR HARDIK C RAWAL for Petitioner No. 1

MR BG JANI for Respondent No. 1

MR KG SHAH for Respondent No. 1

MR YOGESH M BHATT for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/09/2001

ORAL JUDGEMENT

1. By way of this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the award of the Labour Court,

Surat in Reference. (L.C.S.) No. 644/84 by which the respondent - a conductor is ordered to be reinstated with continuity of service but without backwages and with further punishment of stoppage of two increments with permanent effect.

2. The curious development after the making of the impugned award as above is, as stated at the bar, that even as the impugned award was being challenged by this petition in April, 1988, the respondent was already reinstated under order dated 12th February, 1988, a copy of which is placed on record. It was, of course, mentioned in the said order that in case the award of the Labour Court was challenged in the High Court, the order of the High Court shall be binding on the respondent. This Court while admitting the matter on 28.10.1988 granted an injunction against the operation of the award, on condition of compliance with the requirement of Section 17 B of the Industrial Disputes Act. Thereafter, this matter appears to have been listed for final hearing straightaway in the year 2001, and no effort appears to have been made on either side to have the matter heard and disposed at an early date. By now, the respondent - workmen is also stated to have retired on 30th April, 2000, and even his terminal and retiral benefits are also stated to have been paid.

3. Against the background and foreground of facts as above, the learned Counsel for the petitioner vehemently argued that the respondent was found to be guilty of serious misconduct of misappropriation at the departmental enquiry which was also not challenged by the respondent. It was further submitted that the default card of the respondent contained a number of serious misconducts of non-issuance of tickets and absence without leave which ought to have weighed with the Labour Court while exercising its power under Section 11 A of the Industrial Disputes Act, 1947. Thus in short, the learned Counsel sought to justify the order of dismissal and prayed for quashing the impugned award ordering reinstatement of the respondent.

4. Going through the impugned award it is apparent that the respondent had not seriously disputed the legality and validity of the departmental enquiry as also the finding thereof. As regards the main charge of non issuance of tickets, he pleaded that he was not in good health due to which he could not issue tickets in time. After overall assessments of facts and circumstances, the Labour Court has recorded a finding that during sixteen years of service of the respondent, the respondent did

not appear to have been involved in any serious offence and had never been subjected to any severe or major punishment. Therefore, in order to mete out a punishment proportionate to the seriousness of the misconduct it was held that denial of backwages and stoppage of two increments would meet the ends of justice. Thus the impugned order made in the exercise of the discretion and powers vested in the Labour Court cannot be held to be in any way in excess of its jurisdiction.

4. It is true, as submitted by the learned Counsel Mr. Raval for the petitioner, that once the misconduct of misappropriation was proved, whether of a small or large amount, any show of sympathy would be uncalled for and any interference by substituting the penalty imposed by the employer would not be justified as held by the Supreme Court in the case of JANATHA BAZAR SOUTH KANARA CENTRAL COOPERATIVE WHOLESALE STORES LTD & OTHERS. Vs. SECRETARY, SAHAKARI NOUKARARA SANGHA AND OTHERS reported in 2000(7) SCC, 517. However, the facts of this case are nearer to those that obtained in the case of KARNATAKA STATE ROAD TRANSPORT CORPORATION Vs. B.S. HULLIKATTI reported in 2001 (2) SCC, 574 in which the Supreme Court, taking note of the fact of retirement of the workmen, did not set aside the order of reinstatement but only denied the backwages.

5. Following the latter judgement of the Supreme Court, since the respondent has already retired and is paid all the retirement benefits by now, it would not be proper to interfere with the impugned order which in any case imposes the penalty of denial of backwages and stoppage of two increments with permanent effect. Therefore, in the peculiar facts and circumstances of the case, the petition is dismissed with no orders as to costs. Rule is discharged.

(D.H. WAGHELA,J.)

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